IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.2.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO. 7470 OF 1997

The Management
Alankar Theatre,
D.D.Road,
Salem-1. .. Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2. C.Arumugam. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus as stated therein.

For petitioner : Mr.M.R.Raghavan
For 2nd respondent: Mr.R.Ganesan.
R1-Court.

O R D E R

The above Writ Petition has been filed praying to issue a writ of certiorari, to call for the records in I.D.No.160 of 1995 on the file of the Labour Court, Salem, the first respondent herein, quash the Award passed therein dated 24.10.1996.

2. The case of the petitioner is that the second respondent employee was employed under the petitioner as a Gate Keeper; that he was not regular in his attendance and he used to indulge in misconduct during the tenure of his service with the petitioner; that he was indulging in criminal offences and a charge sheet was issued to him on 5.1.1995 calling for his explanation for the misconduct viz., he was permitting his friends to view the picture in the theatre without proper tickets and he was indulging in the said act in spite of warnings given by the management for such acts of misconducts; that no reply was offered by him for the show cause notice issued by the petitioner on 5.1.1995; that on 21.1.1995 he was arrested by the local police for the alleged commission of offence punishable under Sections 323, 307 and 147 of the IPC along with his friends; that from 21.1.1995, he did not report for duty; that the petitioner

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also did not terminate his services by any order, but he was not permitted to continue duty on 15.2.1995; that since the Industrial Dispute raised before the Labour Officer could not be amicably settled and since the Labour Officer recorded failure conciliation, the second respondent approached the Labour Court, Salem, the first respondent herein seeking relief of reinstatement with back-wages and continuity of service.

3. The further case of the petitioner is that the dispute was taken on file by the first respondent in I.D.No.160/1995; that though the Labour Court impliedly accepted the case of the petitioner stating that the petitioner lost confidence in the second respondent and denied the relief of reinstatement, but however, granted the relief of back-wages and one half of future wages without any basis and the Labour Court has passed the impugned Award dated 21.10.1996 thereby directing payment of Rs.55,000/- to the second respondent herein along with cost of Rs.250/- . Aggrieved by the said award of the Labour Court, the petitioner has come forward to file the above writ petition seeking the relief extracted supra.

4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents contra and the materials placed on record have also been perused.

5. During arguments, the learned counsel for the petitioner would submit that since the Labour Court having come to the conclusion that the management lost confidence in the second respondent and on that basis, the relief of reinstatement is negatived, it has exceeded its jurisdiction by granting back-wages and future wages; that the Labour court ought to have seen that the continuous absence of the second respondent itself would be sufficient to deny employment to the second respondent and on this basis the Labour Court ought to have rejected the claim of the petitioner; that the presumption of the Labour Court that the workman would be entitled to the relief of back-wages till he attains the age of 60 years is without any basis. On such arguments, he would pray for the relief extracted supra.

6. On the other hand, the learned counsel for the second respondent would submit that the Award of the Labour Court is justified; that since the management was not permitted the second respondent to continue in service, the Labour Court awarded compensation; that the alleged Criminal cases against the second respondent were ended in acquittal; that the second respondent employed as gate-keeper in the petitioner theatre since 1969 and he has been put in service for more than 25 years and during that period no charge framed nor any Criminal Case has been initiated against the second respondent and that the first respondent has rightly passed an award of compensation in favour of the second respondent and it does not warrant any interference and hence he would pray for dismissal of

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the above writ petition.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that it is a case in which glaring evidence is available for the absence of the second respondent from duty since 21.1.1995 and admittedly he was arrested in a Sessions Case registered by the Ammapet police in their P.S. Crime No.191/1995 for the commission of offences punishable under Sections 147, 323 and 307 IPC and the further evidence goes to show that the petitioner is the 5th accused therein and he got arrested on the very same day on which the case was registered.

8. The evidence is available even for the petitioner being inside the prison for 23 days from 21.1.1995 onwards and thereafter he was let on conditional bail with a condition to remain at Trichy and even spending at Trichy for 15 days and after coming from Trichy has come forward to claim job and it is relevant to consider that right from 21.1.1995 till Ex.W5 dated 27.3.1995 i.e. after clear cut term of two months and 5 days the whereabouts of the petitioner was not known nor is there any evidence to prove that he either contacted the petitioner management nor applied for leave nor even sent a leave letter and it should be only treated as unauthorised absence, which is not an ordinary delinquency and serious one.

9. However, on the part of the second respondent he would come forward to say that under Ex.W5 he requested the management to permit him to rejoin duty which they did not do and in fact 10 days even prior to Ex.W5 that was on 17.3.1995 itself the petitioner management has removed him from service. However, the case of the second respondent is that no enquiry was held for any delinquency and that at that time he was aged 55 and he could have served for 5 years then and therefore, taking into consideration of all those facts without assigning any reason for the unauthorised absence nor even having any discussion on the subject which is the main delinquency that has to be decided within the parameters of law, the Labour Court does not seem to have taken it seriously and has jumped to the conclusions to compensate the second respondent with payment of the monthly salary calculating the same for the remaining period till the time of his attaining superannuation on completion of the age of 60.

10. Since the Labour Court having not decided the main issue of unauthorised absence of the petitioner for 2 months and 5 days nor giving a finding on the said delinquency, has simply arrived at the conclusion to grant the monthly salary calculating the remaining period, it is pertinent to consider that the petitioner has been paid for being absent in an unauthorised manner resulting in his removal from service and further for the period that he did not work at all and therefore, since the petitioner was not available for

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even any disciplinary enquiry to be held, the management was left with no other alternative but to remove him from service and thereafter off late the petitioner comes forward to say that he sent Ex.W5 expressing his desire to join duty and therefore, in these circumstances the Labour Court should not have concluded in the manner that it has done absolutely without caring for the delinquency that the petitioner has committed.

11. Admittedly, the delinquency was committed by the petitioner on account of his getting involved in Criminal Offences resulting in his arrest and confinement and thereafter on conditional bail etc. But the punishment has been given to the management employer for no fault committed on the part of the employer and therefore, this Court is of the view that the Labour Court has not dealt with the subject in the manner required under law but in a different manner in accordance with its pleasure which is unacceptable in law.

12. However, on the part of the second respondent learned counsel would argue to the effect that it was a false case registered against him and ultimately he got acquitted by a competent court of law and now the second respondent has become aged and not in a position to eke-out anything for his livelihood and even after coming out on bail and the condition imposed therein was over he was willing to join duty since already he had served in the petitioner management for 26 years and therefore, would crave the mercy of this Court.

13. In the above circumstances on an overall consideration of the facts encircling the whole subject, this Court is able to find that the delinquency is very serious. But on the part of the petitioner management no enquiry seems to have been conducted following the procedures established by law and therefore, without accepting the award as a whole, this court is of the view for the same period calculated by the Labour Court instead of permitting the entire monthly salary, cutting the same to 50% would be a balanced decision that would serve the ends of justice and hence the following order:

In result,

(i)the above writ petition is partly allowed

(ii) instead of the grant of a sum of Rs.55,000/- there shall be exactly 50% of the same shall be paid to the 2nd respondent workman and the same is ordered herein;

(iii) from and out of the total sum of Rs.55,000/- deposited by the petitioner management, it is hereby

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ordered that 50% shall be paid in favour of the second respondent and the remaining 50% shall be returned to the petitioner management;

(iv) however, in the circumstances of the case, there shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer, Labour Court, Salem.

One cc to Mr.R.Ganesan, Advocate in SR.4972.

One cc to Mr.M.R.Raghavan, Advocate SR.5026.

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